

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEREK R.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 3:20-cv-05154-TLF

ORDER REVERSING AND REMANDING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant's denial of his applications for disability insurance (DIB) and supplemental security income (SSI) benefits.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13.

I. ISSUES FOR REVIEW

- A. Did the Administrative Law Judge ("ALJ") err in evaluating Plaintiff's subjective symptom testimony?
- B. Did the ALJ err in assessing medical opinion evidence?
- C. Did the ALJ err in assessing lay witness testimony?
- D. Was the Plaintiff's residual functional capacity ("RFC") determination supported by substantial evidence?

II. BACKGROUND

On October 2016, Plaintiff filed applications for DIB and SSI, alleging in both applications a disability onset date of December 31, 2013. Administrative Record (AR) 351–52, 359. Plaintiff's applications for DIB and SSI were denied upon official review and upon reconsideration. AR 201–02, 227–28. A hearing was held before ALJ Paul Gaughen on September 18, 2018. AR 160–89. On November 29, 2018, the ALJ issued a decision finding that Plaintiff was not disabled. AR 28–51. On December 17, 2019, the Social Security Appeals Council denied Plaintiff's request for review. AR 1–7.

Plaintiff seeks judicial review of the ALJ's November 29, 2018 decision. Dkt. 4.

III. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of Social Security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

IV. DISCUSSION

In this case, the ALJ found that Plaintiff had the severe, medically determinable impairments of affective anxiety-related post-traumatic stress disorder (“PTSD”), substance addiction disorders, and a severe musculoskeletal impairment to his right hand. AR 34. Based on the limitations stemming from these impairments, the ALJ found that Plaintiff could perform a reduced range of light work. AR 37. Relying on vocational expert (“VE”) testimony, the ALJ found at step four that Plaintiff could not perform his past relevant work, but could perform other light, unskilled jobs at step five of the

1 sequential evaluation; therefore, the ALJ determined at step five that Plaintiff was not
2 disabled. AR 44.

3 A. Whether the ALJ Erred in Assessing Plaintiff's Subjective Symptom

4 Testimony

5 Plaintiff avers that the ALJ's adverse credibility finding as to his own symptom
6 testimony was not supported by adequate reasoning. Dkt. 18, pp. 12–17.

7 In weighing a plaintiff's testimony, an ALJ must use a two-step process. *Trevizo*
8 *v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine whether
9 there is objective medical evidence of an underlying impairment that could reasonably
10 be expected to produce some degree of the alleged symptoms. *Ghanim v. Colvin*, 763
11 F.3d 1154, 1163 (9th Cir. 2014). If the first step is satisfied, and provided there is no
12 evidence of malingering, the second step allows the ALJ to reject the claimant's
13 testimony of the severity of symptoms if the ALJ can provide specific findings and clear
14 and convincing reasons for rejecting the claimant's testimony. *Id.*

15 In addition to testifying at the hearing, Plaintiff submitted function reports in
16 November 2016 and January 2017. See AR 405–12, 432–39. In each report, he
17 described “up and down” shifts in his mood from one day to the next and stated that, on
18 some days, he was so depressed that he did not want to leave his bed, comparing this
19 experience to “hibernating.” AR 405, 412, 432. He also stated that he had difficulty in
20 dealing with authority figures and felt “just negative towards people” in general, suffered
21 from a stutter and frequent forgetfulness, and struggled to summon the necessary
22 concentration or motivation to complete tasks. AR 410.

1 The ALJ found that Plaintiff's symptoms were less severe than he alleged,
2 reasoning that (1) his statements were inconsistent with his activities of daily living, (2)
3 Plaintiff sought only conservative treatment for these symptoms, and treatment
4 mitigated his symptoms significantly, and (3) the symptoms alleged were inconsistent
5 with objective medical evidence. AR 36–37.

6 With respect to the ALJ's first reason, a claimant's participation in everyday
7 activities, indicating capacities that are *transferable to a work setting*, may constitute
8 grounds for an adverse credibility determination. *Orn v. Astrue*, 495 F.3d 625, 630 (9th
9 Cir. 2007) (emphasis added). Yet, disability claimants should not be penalized for
10 attempting to lead normal lives in the face of their limitations. See *Reddick v. Chater*,
11 157 F.3d 715, 722 (9th Cir. 1998) (citing *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir.
12 1987) (claimant need not “vegetate in a dark room” in order to be deemed eligible for
13 benefits)).

14 Here, the activities listed by the ALJ included Plaintiff's participation in mixed
15 martial arts (“MMA”) cage fighting and weightlifting, part-time work, and attendance at
16 Alcoholics Anonymous (“AA”) and Narcotics Anonymous (“NA”) meetings. First, the
17 ALJ's citations to the record do not indicate either the frequency or intensity with which
18 Plaintiff engaged in MMA cage fights or weightlifting. See AR 514 (documenting hand
19 injury from MMA); 560 (stating Plaintiff had “been lifting more weights for exercise” with
20 no indication of how frequently this took place). At the hearing, Plaintiff stated that he
21 had taken up MMA at the encouragement of his family as a way to mitigate his anger
22 issues, and that he broke his left hand while fighting, forcing him to quit altogether. AR
23 170–71.

1 The ALJ's citations to portions of the record documenting Plaintiff's work
2 activities, similarly, do not support a finding that Plaintiff was able to adhere to the rigors
3 of a full-time job. AR 41 (citing AR 518, 554, 557). Indeed, the ALJ's last citation on this
4 topic is to a medical record indicating Plaintiff had to miss work due to severe pain. AR
5 564. The ALJ relied on Plaintiff's work activity to show he was not limited by his hand
6 injury, but there is not any indication in these records as to how frequently he was
7 required to use his right hand; indeed, at the hearing, Plaintiff testified to a work-related
8 injury to his right hand in 2016. AR 41; *see also* AR 176. Finally, the record does not
9 disclose the frequency with which Plaintiff attended AA or NA meetings or assumed any
10 volunteer duties in these organizations. Without more, Plaintiff's activities are not a
11 clear and convincing reason supporting an adverse credibility determination. *See Fair v.*
12 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) ("[M]any home activities are not easily
13 transferable to what may be the more grueling environment of the workplace, where it
14 might be impossible to periodically rest or take medication.").

15 As to the ALJ's second reason, the effectiveness of treatment is a relevant factor
16 in determining the severity of a claimant's symptoms. 20 C.F.R. § 416.929(c)(3); *see*
17 *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006); *Tommasetti*
18 *v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (a favorable response to treatment can
19 undermine a claimant's complaints of debilitating pain or other severe limitations). The
20 conservative nature of treatment can serve as a specific, legitimate reason for
21 discounting a medical opinion when it *successfully relieves* symptoms. *See* 20 C.F.R. §
22 404.1529(c)(3)(iv) (evaluating the **effectiveness** of medication and treatment and not
23 whether treatment is aggressive or conservative). Here, the conservative treatment as
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1 described by the ALJ for Plaintiff's mental health symptoms included regular therapy
2 and prescription medications—the latter including Depakote, Wellbutrin, and Seroquel;
3 trials of hydroxyzine and clonazepam; and prazosin. AR 40. For his physical pain
4 symptoms, Plaintiff underwent successive surgeries in his right hand and was
5 prescribed physical therapy and narcotic pain medications. AR 40; 172. Even if these
6 treatments could be described as conservative, new evidence submitted to the Appeals
7 Council indicates that Plaintiff continues to present with significant anxiety symptoms
8 and intermittent depression, and that he continues to suffer from physical pain
9 symptoms, having fractured his hand yet again in 2019. See AR 52, 72, 79, 100.
10 Accordingly, the ALJ's finding that Plaintiff's condition could be effectively managed with
11 conservative treatment is not supported by substantial evidence.

12 As to the ALJ's final reason, an inconsistency with the objective evidence may
13 serve as a clear and convincing reason for discounting a claimant's testimony.
14 *Regennitter v. Comm'r of Social Sec. Admin.*, 166 F.3d 1294, 1297 (9th Cir. 1998). But
15 an ALJ's decision may not reject a claimant's subjective symptom testimony "solely
16 because the degree of pain alleged is not supported by objective medical evidence."
17 *Orteza v. Shalala*, 50 F.3d 748, 749-50 (9th Cir. 1995); *Byrnes v. Shalala*, 60 F.3d 639,
18 641-42 (9th Cir. 1995) (applying rule to subjective complaints other than pain).

19 As to Plaintiff's mental health symptoms, the ALJ discussed at length mental
20 status examination results that showed Plaintiff with normal speech, cooperative
21 behavior, a sound attention span, appropriate thought content and thinking patterns,
22 and "depressed although normal mood and affect," as well as physical exam results that
23 "often do not mention any particular observed mental abnormalities." AR 40 (citing AR
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1 535, 543, 554, 557, 560, 675, 903). The ALJ did not discuss mental status and physical
2 exams that documented heightened anxiety and intermittent panic attacks, an affect that
3 was fatigued, tired or agitated, and restlessness or tearfulness. See, e.g. AR 521, 529,
4 538, 540, 550, 602, 615, 617, 913–17. The ALJ discussed, in greater depth, one mental
5 status examination purportedly from spring 2018 that showed plaintiff was able to count
6 serial threes and sevens, memorize digit spans, sustain concentration and recall words
7 with only one error. AR 40 (citing AR 623–33). However, this mental status examination
8 took place in the spring of 2008, well before the alleged onset date of Plaintiff's
9 disability, not in 2018. The ALJ addressed Plaintiff's poor performance in a September
10 2018 mental status exam but appeared to link it to an "episode of lightheadedness and
11 hyperventilation" that occurred in July 2018. AR 40 (citing AR 672–76, 1204–14). The
12 two-month gap between Plaintiff's emergency room visit and his mental status exam
13 does not support an inference of linkage between the two.

14 The ALJ does not acknowledge the inherently cyclical nature of bipolar disorder.
15 "Cycles of improvement and debilitating symptoms are a common occurrence, and in
16 such circumstances it is error for an ALJ to pick out a few isolated instances of
17 improvement over a period of months or years and to treat them as a basis for
18 concluding a claimant is capable of working." *Garrison v. Colvin*, 759 F.3d 995, 1017
19 (9th Cir.2014). The regulations themselves provide, "Proper evaluation of your
20 impairment(s) must take into account any variations in the level of your functioning in
21 arriving at a determination of severity over time." 20 C.F.R. Pt. 404, Subpt. P, App. 1, §
22 12.00D(2). Because bipolar disorder is variable, an ALJ may not "improperly single[]
23 out a few periods of temporary well-being from a sustained period of impairment" to
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1 discredit a claimant. *Garrison*, 759 F.3d at 1018; *Reddick*, 157 F.3d at 722–23 (ALJ may
2 not “cherry-pick” observations without considering context). When “a person who suffers
3 from severe panic attacks, anxiety, and depression” improves, that “does not mean that
4 the person’s impairments no longer seriously affect her ability to function in a
5 workplace.” *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir.2001). “Occasional
6 symptom-free periods—and even—the sporadic ability to work—are not inconsistent
7 with disability.” *Lester v. Chater*, 81 F.3d 821, 833 (9th Cir.1995). The ALJ’s finding of
8 inconsistency between Plaintiff’s subjective reports and objective medical records was
9 not supported by substantial evidence. Thus, the ALJ erred.

10 While the ALJ erred, the Court must determine whether this error was harmless.
11 Harmless error principles apply in the Social Security context. *Molina v. Astrue*, 674
12 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not
13 prejudicial to the claimant or is “inconsequential” to the ALJ’s “ultimate nondisability
14 determination.” *Stout v. Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055
15 (9th Cir. 2006); see *Molina*, 674 F.3d at 1115. The determination as to whether an error
16 is harmless requires a “case-specific application of judgment” by the reviewing court,
17 based on an examination of the record made “without regard to errors’ that do not affect
18 the parties’ ‘substantial rights.’” *Molina*, 674 F.3d at 1118–1119 (quoting *Shinseki v.*
19 *Sanders*, 556 U.S. 396, 407 (2009) (quoting 28 U.S.C. §2111)).

20 In this case, the ALJ’s error was not harmless. Had the ALJ properly considered
21 Plaintiff’s subjective testimony, the ALJ may have incorporated limitations related to
22 Plaintiff’s mental and physical impairments in making a determination as to Plaintiff’s
23 residual functional capacity. Had the ALJ incorporated such limitations, in turn, the

1 ultimate disability determination may have changed. Accordingly, the ALJ's error was
2 not harmless and requires reversal.

3 B. Whether the ALJ Erred in Evaluating Medical Opinion Evidence

4 Plaintiff contends that the ALJ erred in giving only "some weight" to the medical
5 opinions of examining psychologists Tasmyn Bowes, Psy.D., William Wilkinson, Ed.D.,
6 and Terilee Wingate, Ph.D., as well as reviewing psychologist Luci Carstens, Ph.D. Dkt.
7 18, pp. 3–6. He also asserts that the ALJ erred in instead relying on the opinion of
8 reviewing psychologist Matthew Comrie, Psy.D. Dkt. 18, pp. 11–12.

9 In assessing an acceptable medical source, the ALJ must provide "clear and
10 convincing" reasons for rejecting the uncontradicted opinion of either a treating or
11 examining doctor. *Lester*, 81 F.3d at 830 (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506
12 (9th Cir. 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). When a treating
13 or examining doctor's opinion is contradicted, the opinion can be rejected "for specific
14 and legitimate reasons that are supported by substantial evidence in the record." *Lester*,
15 81 F.3d at 830–31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)).

16 1. Opinion of Dr. Bowes

17 Dr. Bowes examined Plaintiff on November 9, 2015. AR 865. She noted Plaintiff's
18 diagnoses of major depressive disorder, PTSD, attention deficit-hyperactivity disorder,
19 and substance use disorders that were in remission. AR 868. Performing a mental
20 status examination, she noted Plaintiff's mood to be depressed and his affect blunted,
21 and found his abstract thinking capability, insight, and judgment to fall outside normal
22 limits. AR 870. Based on her examination, she went on to opine that Plaintiff would have
23 marked limitations in the functional area of performing activities within a schedule,

1 maintaining regular attendance, and being punctual within customary workplace
2 tolerances. AR 868.

3 She further opined that Plaintiff would be moderately limited in understanding,
4 remembering, and persisting in tasks by following detailed instructions; in learning new
5 tasks; in making simple work-related decisions; in asking simple questions or requesting
6 assistance; in communicating and performing effectively in a work setting; in
7 maintaining appropriate behavior in a work setting; in completing a normal work day or
8 week without interruptions from psychologically based symptoms; and, finally, in setting
9 realistic goals and planning independently. AR 868–69. Dr. Bowes also recommended
10 that plaintiff should have a protective payee due to mismanagement of funds. AR 869.

11 2. Opinions of Dr. Wilkinson and Dr. Carstens

12 Dr. Wilkinson examined Plaintiff on October 17, 2016, and diagnosed Plaintiff as
13 having an unspecified form of bipolar disorder, PTSD, and polysubstance dependence
14 in full remission. AR 496, 498. In addition to the functional limitations that Dr. Bowes
15 assessed, Dr. Wilkinson found that Plaintiff would be markedly limited in the area of
16 maintaining appropriate behavior in a work setting, and would have moderate limitations
17 in performing routine tasks without special supervision, in adapting to changes within a
18 routine work setting, and in staying aware of normal hazards and taking appropriate
19 precautions—three areas in which Dr. Bowes assessed Plaintiff as having only mild
20 limitations. See AR 498–99, 868. Dr. Wilkinson did not recommend a protective payee.
21 AR 499.

22 On October 19, 2016, Dr. Carstens reviewed Plaintiff's medical records and
23 concurred in Dr. Wilkinson's assessment of Plaintiff's limitations – except, Dr. Carstens
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1 opined that “a longer duration of 18-24 months should be considered”. AR 508. Dr.
2 Carstens stated that an onset date of November 9, 2015 was consistent with the clinical
3 documentation. AR 509.

4 3. Opinion of Dr. Wingate

5 In September 2018, Dr. Wingate performed a functional capacity evaluation that
6 included a clinical interview and mental status examination, making note of Plaintiff’s
7 dysphoric mood and blunted affect. AR 1208. She also noted his memory,
8 concentration, insight, and judgment fell outside normal limits in the mental status
9 examination. AR 1206–07. In this assessment, she diagnosed Plaintiff with PTSD, panic
10 disorder, bipolar disorder in partial remission, attention deficit-hyperactivity disorder, and
11 substance use disorder in remission. AR 1206. She opined that Plaintiff would have
12 marked limitations in the areas of performing activities within a schedule,
13 communicating and performing effectively in a work setting, maintaining appropriate
14 behavior, and completing a normal work day or week without interruptions from his
15 psychologically based symptoms. AR 1207.

16 4. ALJ’s Weighing of the Opinions

17 The ALJ did not discuss the opinions of Drs. Bowes, Wilkinson, Carstens, and
18 Wingate separately but addressed them as a whole, stating that their “general
19 limitations indicating [Plaintiff] is restricted to unskilled work with limited social
20 interactions is consistent with the longitudinal record,” but that each of these doctors
21 was “only able to examine [Plaintiff] on limited occasions,” and that the opinions were
22 “not consistent with the totality of the record” insofar as they “suggest[ed Plaintiff] is
23 unable to work full time or complete a regular schedule[.]” AR 43. The ALJ thus gave

1 these opinions only “some weight,” and opted to give great weight instead to the opinion
2 of non-examining psychological consultant Matthew Comrie, Psy.D. AR 42–43.

3 Dr. Comrie reviewed Plaintiff’s medical records on March 8, 2017, as part of the
4 initial disability reconsideration process and opined Plaintiff “would have occasional
5 difficulties in maintaining concentration, pace and persistence when symptomatic,” but
6 would be “capable of simple and well-learned detailed tasks [with] reasonable
7 [concentration, persistence, and pace], attending work within customary tolerances,
8 working [within] a routine, and completing a normal workday/week.” AR 240. As for
9 social functioning, he wrote that Plaintiff could occasionally collaborate with coworkers
10 but should not be expected to interact with the general public. AR 241, 244. Dr. Comrie
11 did not find Plaintiff to have any memory limitations. AR 240. Finally, with regard to
12 adaptation capacities, he wrote that Plaintiff would be able to adjust to changes with
13 sufficient notice and “be able to set goals and make plans for simple and familiar
14 detailed tasks.” AR 241. He also found that Plaintiff could perform unskilled work, but “is
15 not capable of public contact”. AR 244.

16 An ALJ is not required to give reasons for crediting, as opposed to rejecting,
17 medical opinion evidence. *Howard v. Barnhart*, 341 F.3d 1393, 1395 (9th Cir. 1984).
18 However, an ALJ is required to give specific and legitimate reasons, based on
19 substantial evidence in the record, when they reject the opinion of a treating or
20 examining physician based in part on the testimony of a non-examining medical advisor.
21 *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995).

22 With respect to the ALJ’s first reason, Drs. Bowes, Wilkinson, and Wingate each
23 performed a one-time examination of Plaintiff. This would be a valid reason to give less
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1 weight to these doctors' opinions as compared to opinions of a treating psychologist, but
2 "it is not a reason to give preference to the opinion of a doctor who has *never* examined
3 the claimant." *Lester*, 81 F.3d at 832. The ALJ erred in relying on this reason.

4 With respect to the ALJ's second reason, a conflict between treatment notes and
5 an examining physician's opinions may constitute an adequate reason to discount the
6 opinions of an examining physician. See *Valentine v. Comm'r of Soc. Sec. Admin.*, 574
7 F.3d 685, 692-93 (9th Cir. 2009) (holding that a conflict with treatment notes is a
8 specific and legitimate reason to reject treating physician's opinion). Yet ALJs may not
9 "cherry-pick" evidence from the record to support their findings. See *Holohan*, 246 F.3d
10 at 1207 (finding that the ALJ erred by selectively picking some entries in the record
11 while ignoring others).

12 As discussed above, *supra* Section IV. A., the ALJ relied to a great extent on
13 treatment notes and examination findings tending to indicate Plaintiff's symptoms were
14 manageable; in so doing, the ALJ ignored or minimized extensive medical evidence
15 indicating a contrary conclusion. This is not a specific and legitimate reason to reject the
16 examining psychologists', or Dr. Carstens' analysis, and it is particularly problematic
17 with regard to Plaintiff's mental health symptoms due to the cyclical nature of bipolar
18 disorder. Just as the ALJ erred in rejecting Plaintiff's testimony on this basis, so, too, did
19 the ALJ err in giving less weight to the opinions of examining and reviewing doctors on
20 this basis.

21 C. Whether the ALJ Erred in Assessing Lay Witness Statements

22 Next, Plaintiff asserts that the ALJ erred in evaluating third party function reports
23 from his mother, Yvette Brooks, and his partner, Samantha Robson. Dkt. 18, pp. 17-18.

1 Lay testimony regarding a claimant's symptoms "is competent evidence that an
2 ALJ must take into account," unless the ALJ "expressly determines to disregard such
3 testimony and gives reasons germane to each witness for doing so." *Lewis v. Apfel*, 236
4 F.3d 503, 511 (9th Cir. 2001). In rejecting lay testimony, the ALJ need not cite the
5 specific record as long as "arguably germane reasons" for dismissing the testimony are
6 noted, even though the ALJ does "not clearly link his determination to those reasons,"
7 and substantial evidence supports the ALJ's decision. *Id.* at 512. The ALJ also may
8 "draw inferences logically flowing from the evidence." *Sample v. Schweiker*, 694 F.2d
9 639, 642 (9th Cir. 1982).

10 Yvette Brooks completed a third-party function report in March 2017 and another,
11 shorter lay witness questionnaire in September 2018. AR 440–46, 471–74. In her 2017
12 report, she seconded many of Plaintiff's statements regarding his up-and-down moods,
13 difficulties with social functioning, and inability to concentrate, while adding that Plaintiff
14 "always thinks he's going to die and thinks there's something wrong with himself." AR
15 446. She observed that Seroquel caused side effects, making Plaintiff drowsy and
16 sleepy. AR 447.

17 In her 2018 questionnaire, she added that standing and walking was not an issue
18 for Plaintiff, but that sitting was, because he would become very restless. She stated
19 that she bought groceries for Plaintiff because he was unable to concentrate, and
20 reiterated that he had little to no social life because he "always wants to be in charge or
21 he gets angry." AR 473. Finally, Brooks noted that Plaintiff's hand alternated between
22 severe pain and numbness after surgery, causing him to be unable to hold items. AR
23 471.

1 Samantha Robson also completed a lay witness questionnaire in September
2 2018. She stated that Plaintiff's constant nervousness sometimes causes him to shake
3 and causes "shakiness even in his voice when he speaks." She also noted Plaintiff's
4 severe mood swings, that he often forgets what he just said and repeats himself, and he
5 is obsessively clean and concerned with doing tasks in a particular order. She stated
6 that Plaintiff's hand pain afflicted him day and night and prevented him from enjoying
7 painting, a previous hobby. AR 477-78.

8 In discussing these statements, the ALJ found that Brooks's and Robson's
9 observations "mirror[ed]" Plaintiff's testimony and were inconsistent with medical
10 evidence indicating Plaintiff's hand surgery was successful and his other physical and
11 mental symptoms were successfully managed with therapy. AR 38.

12 The ALJ's reasons for rejecting the testimony of these lay witnesses
13 were substantially the same as those given for rejecting Plaintiff's symptom testimony.
14 As discussed above, *supra* Section IV. A., these reasons were not supported by
15 substantial evidence. In rejecting the lay witness statements by relying on an incomplete
16 discussion of the medical evidence, the ALJ erred by failing to give reasons germane to
17 each witness for doing so.

18 D. Whether the ALJ's RFC Determination is Supported by Substantial Evidence

19 Plaintiff argues the ALJ erred in formulating the RFC and in making his step five
20 findings. Dkt. 19, pp. 17-18. Plaintiff argues, among other things, the RFC was
21 incomplete because the ALJ failed to properly evaluate and include all limitations from
22 Plaintiff's symptom testimony, the medical opinion evidence, and the lay witness
23 evidence. Because the Court has found in Plaintiff's favor on several issues raised

1 regarding lack of substantial evidence concerning the ALJ's reasons for rejecting the
2 psychological evidence from examining psychologists and from Dr. Carstens, Plaintiff's
3 argument concerning the RFC succeeds. See *Lingenfelter v. Astrue*, 504 F.3d 1028,
4 1040–41 (9th Cir. 2007) (holding ALJ's RFC assessment and step five determination
5 were not supported by substantial evidence where the ALJ's RFC and hypotheticals to
6 vocational expert failed to include all of the claimant's impairments)

7 CONCLUSION

8 Based on the foregoing discussion, the Court finds the ALJ erred when he
9 determined plaintiff to be not disabled. Defendant's decision to deny benefits therefore
10 REVERSED and this matter is REMANDED for further administrative proceedings. The
11 ALJ is directed to hold a new hearing and give Plaintiff the opportunity to provide
12 additional evidence; re-evaluate Plaintiff's symptom testimony, all medical opinion
13 evidence, and lay witness testimony, as well as any new evidence produced after the
14 date of the last hearing.

15 Dated this 7th day of May, 2021.

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17 Theresa L. Fricke
United States Magistrate Judge